

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO RESIDENCE CLUB,  
INC, et al.,

Plaintiffs,

v.

ABACUS FINANCIAL GROUP, LLC, et  
al.,

Defendants.

Case No. [09-cv-02054-RS](#) (JSC)

**ORDER GRANTING MOTION TO  
AMEND JUDGMENT**

Re: Dkt. No. 247

This lawsuit arises out of a failed real estate development in Kona, Hawaii. On the eve of trial, in July 2011, the parties reached a settlement which was memorialized in a written agreement and supplement (“the Agreement”). (Dkt. No. 235.) As part of the Agreement, Defendants agreed to make certain payments at particular times and, if those payments were not made as agreed, they stipulated to entry of judgment in a greater amount. In June 2012, the Court entered judgment against certain defendants in the amount of \$41,666.00 due to some of the defendants’ failure to make a payment due December 15, 2011. (Dkt. Nos. 237, 238.)

Now pending before the Court is Plaintiff’s motion to amend the judgment further in light of the failure of defendants Edward Broda, Gregory Fish and G.D. Fish & Associates to pay amounts due under the Agreement beginning in March 2013. After carefully considering the papers and evidence submitted by Plaintiff, as well as the records previously filed in this case, and the opposition of defendant Gregory Fish and G.D. Fish & Associates (the only defendants to file a response to the motion), the Court concludes that oral argument is unnecessary, *see* Civ. L.R. 7-1(b), and GRANTS the motion. It is undisputed that Defendants have not made the required payments and therefore under the plain terms of the Agreement Plaintiffs are entitled to have the judgment amended.

**DISCUSSION**

Among other things, the Agreement provided that Defendants Edward S. Broda, Aspire Investments, Inc., and Aspire Real Estate, Inc. (“the Aspire Defendants”) jointly and severally, would pay Plaintiffs the sum of \$75,000 with the first payment in the amount of \$6,750.00 due March 1, 2013, and all subsequent payments of \$375 due on the same day of each following months until the total is paid. (Dkt. No. 235 Ex. B ¶ 3; Dkt No. 248-1 ¶ 4(i).) The Agreement further provided that should any of the payments not be made when due, “Plaintiffs may cause to be entered the stipulated judgment executed by [the Aspire Defendants] in the form attached hereto as Exhibit E hereto in the amount of \$150,000.” (Id.)

As for defendants Gregory Fish and G.D. Fish & Associates (“the Fish Defendants”), the Agreement provided that they would pay Plaintiffs the sum of \$50,000 with \$4,500.00 due March 1, 2013, and all subsequent payments of \$250.00 due the same day of each of the following months until paid in full. (Dkt. No. 235 Ex. B. ¶ 4; No. 248-1 ¶ 4(ii).) The Agreement further provided that should any of the payments not be made when due, “Plaintiffs may cause to be entered the stipulated judgment executed by [the Fish Defendants] in the form attached hereto as Exhibit F hereto in the amount of \$100,000.” (Id.)

The parties also agreed that the undersigned judge would maintain jurisdiction to enforce the terms of the Agreement “and that such jurisdiction shall continue until the payment of all sums due under this Agreement.” (Id., Ex. A ¶ 12.)

It is undisputed that the above defendants have not made any of the required payments, beginning with the payments due March 1, 2013. (Dkt. No. 248-1 ¶ 5.) Accordingly, pursuant to the plain terms of the Agreement, and the attached stipulations, Plaintiffs are entitled to have the judgment amended to include an additional \$150,000 against the Aspire Defendants and an additional \$100,000 against the Fish Defendants.

The Fish Defendants’ lament that they have been attempting to renegotiate the Agreement’s payment terms is immaterial. Plaintiffs are not obligated to modify the Agreement; Defendants are required to comply with the terms to which they previously agreed. Similarly, the Fish Defendants’ promise to pay the overdue interest is too little too late. The Fish Defendants


1 agreed that the stipulated judgment could be entered if they did not make the required payments  
2 beginning March 1, 2013. They agree they did not make those payments. Plaintiffs are therefore  
3 entitled to an additional judgment in the amount of \$100,000 against the Fish Defendants.

4 The Court will enter an amended judgment in accordance with this Order.

5 This Order disposes of Docket No. 247.

6 **IT IS SO ORDERED.**

7 Dated: August 4, 2014

8   
9 JACQUELINE SCOTT CORLEY  
United States Magistrate Judge

United States District Court  
Northern District of California